IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Writ Petition No.10562 of 2004
With
Civil Application No.1911 of 2005

Babulal B. Agarwal — Petitioner

Vs.

Reserve Bank of India & ors. — Respondents

Dr.V.K.Choudhari for petitioner.

Mr.Kunal Damle i/b M/s.Udwadia & Udeshi for Resp.no.1.

Mr.Y.D.Mulani, AGP for Resp.Nos.2 to 4.

Mr.U.S.Opadhye with Mr.Satish Khatal for Resp.no.5.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

September 07, 2006.

P.C.

1. Heard Dr.Choudhari, the learned counsel for the petitioner who claims to be one of the founder members of the Agrasen Urban Co-op. Bank Ltd. at Pune and also a former Managing Committee member including the Chairman of the said Bank. The petitioner assails the order dated 12/6/2003 passed under Section 110A (iii) of the Maharashtra Co-operative Societies Act, 1960 by the Commissioner

for Co-operative and Registrar of Co-operative Societies, Maharashtra State, Pune and the said order is admittedly based on the recommendations made by the Reserve Bank of India vide its letter dated 4/6/2003 addressed to the Registrar, Co-operative Societies. The challenge is two-folds. Firstly, it is contended that Section 110A of the Act is ultra vires the Constitution in asmuchas it does not provide for any opportunity of being heard before either the RBI or the Registrar under the instructions of the RBI invoking the powers of supersession of the committee under Section 110A (iii) of the Act.

2. Undoubtedly Agrasen Urban Co-operative Bank Ltd. is a registered Co-operative society under the Maharashtra Co-operative Societies Act, 1960 and also amenable to the provisions of the Banking Regulation Act, 1949, as it being engaged in the banking activities. It had elected its managing committee in April 1998.

3. Section 110A of the Act reads as under:

"110A. Order for winding up, reconstruction,

supersession of committee, etc., of insured Co-operative bank, not to be made without sanction or requisition of Reserve Bank of India

Notwithstanding anything contained in this Act, in the case of an insured co-operative bank-

(i) an order for winding up, or an order sanctioning a scheme of compromise or arrangement, or of amalgamation, or reconstruction (including division or re-organisation), of the bank may be made only with the previous sanction in writing of the Reserve Bank of India;

(ii) an order for the winding up of the bank shall be made by the Registrar if so required by the Reserve Bank of India in the circumstances referred to in section 13-D of the Deposit Insurance Corporation Act, 1961;

(iii) if so required by the Reserve Bank of India in the public interest or for preventing

the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made by the Registrar for supersession (removal) of the committee and the appointment of an Administrator therefor for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank of India, and the Administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new committee;

(iv) an order for the winding up of the bank or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction (including division or reorganisation) or an order for the supersession (removal) of the committee and the appointment of an Administrator therefor made with the previous sanction in writing or on the requisition of the Reserve Bank of

India shall not be liable to be called in question in any manner; and

(v) the liquidator or the insured co-operative bank or the transferee bank, as the case may be, shall be under an obligation to repay the Deposit Insurance Corporation established under the Deposit Insurance Corporation Act, 1961, in the circumstances to the extent and in the manner referred to in section 21 of that Act.

Explanation - In this section, -

(a) the expression "an co-operative bank" means a society which is an insured bank under the provisions of the Deposit Insurance Corporation Act, 1961;

(b) the expression "the transferee bank" has the same meaning assigned to it in that Act."

4. A Division Bench of this Court in Writ Petition No. 3658 of 2002 was called upon to decide

the legality of the order passed by the RBI / The Registrar, Co-operative Societies, Government of Maharashtra in respect of Shree Sadguru Jangali Maharaj Co-operative Bank Ltd. and while upholding the order passed under Section 110A of the Maharashtra Co-operative Societies Act, 1960 this Court dismissed the petition.

5. A Division Bench of the Gujarat High Court in the case of Reserve Bank of India, Bombay v. Harisidh Co-operative Bank Ltd., Ahmedabad & ors. **[AIR 1988 GUJARAT 107]** had held, inter alia, that it is the duty and, therefore, the business of the Reserve Bank of India to supervise the affairs of the insured co-operative banks. Section 35A of the Banking Regulation Act authorises the Reserve Bank of India to give necessary directions to secure the proper management of any banking company. The order of superseding the Board of Directors of a Co-operative Bank and appointing an Administrator and which is in public interest in emergent situation cannot be faulted and cannot be interfered with only on the ground of violation of the principles of natural justice.

6. The affidavit filed in the instant case by the RBI clearly states that an inspection under Section 35 of the Banking Regulations Act, 1949 was undertaken and the statutory provisions with respect to the commercial banks and co-operative banks are different by virtue of Section 56 of the said Act. The RBI vide its letter dated 4/6/2003 addressed to the Registrar of Co-operative Societies pointed out the following deficiencies and irregularities:

(a) The loans given to the relatives of the directors of the Board are totally unsecured.

(b) The other loan accounts also are unsecured and the facility of "cheque discounting" has been given unscrupulously and without taking sufficient security or without creating an equitable mortgage.

(c) The cash credit facility is given without ascertaining the stock of the firm and renewing the facility in the accounts, which were already overdrawn.

(d) The benami FDRs of Rs.2.10 crore are without proper documentation, out of which FDRs worth Rs.44.72 lakh are unclaimed.

(e) Illegally crediting of dividen warrants worth of Rs.17.81 lakh and Rs.1.95 lakh respectively into the individual current accounts of Gautam Bhattacharya and Bhalya Ram Agarwal.

The report further stated that the scrutiny conducted by the RBI relating to the FDRs in fictitious names revealed, apart from benami deposits from various parties, even a few former Chairmen and directors of the bank had kept benami deposits with the bank which had been seized by the Income Tax authorities.

7. We have noted that in addition to the satisfaction of the RBI after having undertaken the inspection under Section 89A of the Maharashtra Co-operative Societies Act, 1960, the impugned order has been passed more than three years ago and the Committee has been superseded for a period of five years. This petition has been moved on 10/12/2004 for the first time i.e. after about one and half

years from the date of the impugned order. We, therefore, do not see any reason to entertain the challenge to the impugned order at this stage and more so in view of the earlier decision of this Court (D.B.) in Writ Petition No.3658 of 2002. We also have noted that this Court in the cases of Mahendra Husanji Gadkari v. State of Maharashtra & ors. **[(1992) Mh.L.J. 1442]** and Ishwardas Premkumar Choradiya & anr. vs. State of Maharashtra & ors. **[2002 (2) Mh.L.J. 844]** has held that once the direction is issued by the RBI, it must be held that the right of hearing is excluded. Once that is done there is no question of issuing show cause notice to the Directors before passing an order under Section 110A of the Maharashtra Co-operative Societies Act, 1960.

8. Hence we do not deem it appropriate to entertain the challenge to validity of Section 110A of the Maharashtra Co-operative Societies Act, 1960 and on merits the impugned order does not suffer from any infirmities. Therefore, this petition fails at the threshold and the same is hereby rejected summarily.

9. In view of the above, Civil Application No.1911 of 2005 does not survive and the same stands disposed off.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE,J.)